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UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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10 VISION SERVICE PLAN,

NO. CIV. S-04-1993 LKK/JFM

11 Plaintiff,

12 v.

13 O R D E R

14 UNITED STATES OF AMERICA,

15 Defendant.

16 On December 13, 2005, the court granted defendant's motion for
17 summary judgment. On December 23, 2005, the government filed a
18 bill of costs. The court is in receipt of Vision Service Plan's
19 ("VSP") objections to this bill of costs. Specifically, VSP argues
20 that it should not have to pay for depositions that were not
21 referred to by either party in the summary judgment briefing.
22 Defendant has filed a reply to these objections.

23 Fed. R. Civ. P. 54(d) and 28 U.S.C. § 1920 allow the award of
24 certain costs, including deposition costs, to the prevailing party.

25 Alflex Corp. v. Underwriters Lab., Inc., 914 F.2d 175, 176 (9th
26 Cir. 1990), cert. denied, 502 U.S. 812 (1991). Disallowance for

1 expenses of depositions not used at trial is within the district
2 court's discretion. Washington State Dept. of Transp. v.
3 Washington Natural Gas Co., 59 F.3d 793, 806 (9th Cir. 1995)
4 (citation omitted).

5 Having considered the parties' arguments, the court agrees
6 with defendant and awards it the full amount of the deposition
7 costs set forth in its bill of costs. Plaintiff argues that
8 thirteen of the thirty-four depositions taken by the parties were
9 unnecessary because neither parties cited to those depositions in
10 their motions for summary judgment. They further assert that
11 defendant is not entitled to costs related to those thirteen
12 depositions because Fed. R. Civ. P. 30 limits depositions to ten
13 per side. As defendant explains, however, the parties agreed
14 through written stipulation as to the number of depositions
15 allowed. Further, based on the court's examination of the record,
16 the court finds the depositions at issue to be reasonably necessary
17 as most of the individuals defendant deposed were listed by
18 plaintiff in their initial disclosures as possessing discoverable
19 information.¹

20 For the reasons set forth above, plaintiff's objections to
21 defendant's bill of costs are DENIED. The court GRANTS the United
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23 ¹ Defendant points out that eleven of the thirteen deponents
24 at issue were named by plaintiff as persons possessing material
25 knowledge. Def.'s Repl. at 9. Further, the court points out that
26 our system relies on liberal discovery rules to define the disputed
facts and issues, so it is not unusual for litigants to depose
witnesses even if those depositions are not utilized in law and
motion practice.

1 States' full deposition costs. The United States' bill of costs
2 is TAXED in the amount of \$22,340.35.

3 IT IS SO ORDERED.

4 DATED: May 2, 2006.

5 /s/Lawrence K. Karlton

6 LAWRENCE K. KARLTON
SENIOR JUDGE
7 UNITED STATES DISTRICT COURT

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